

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JENNIFER PIGGOTT and
SLADE PIGGOTT,**

Plaintiffs,

V.

GRAY CONSTRUCTION, INC.,

Defendant/Third-Party Plaintiff,

V.

**COOPER'S STEEL FABRICATORS,
INC., ALL-SOUTH
SUBCONTRACTORS, FREELAND-
HARRIS CONSULTING ENGINEERS
OF KENTUCKY, INC., FREELAND
HARRIS CONSULTING ENGINEERS
OF GEORGIA, INC., THE HARDY
CORPORATION, LATTA PLUMBING
& CONSTRUCTION CO., INC.,
HWAASHIN AMERICAN
CORPORATION and FIRESTONE
BUILDING PRODUCTS
COMPANY, LLC,**

Third-Party Defendants.

JOINT MOTION FOR LEAVE TO MODIFY SCHEDULING ORDER

COME NOW the Third-Party Defendants Cooper’s Steel Fabricators, Inc., All-South Subcontractors, Freeland-Harris Consulting Engineers of Kentucky, Inc., Freeland Harris Consulting Engineers of Georgia, Inc., The Hardy Corporation, Latta Plumbing & Construction Company, Inc., and Firestone Building Products Company, LLC, (hereafter referred to as “Third Party Defendants”) by and through their undersigned counsel,

pursuant to Fed. R. Civ. P.16(b), and for their Motion for Leave to Modify Scheduling Order, state as follows:

INTRODUCTION

1. The Third Party Defendants seek leave to modify the Scheduling Order entered by this Court on March 20, 2007. Specifically, the Third Party Defendants request that the Court enter a new scheduling order, superseding and modifying *in toto* the existing Scheduling Order, including the trial date. Good cause exists for granting this motion. Several new parties have now been added to the litigation and several new claims have been asserted as cross-claims and third party claims. The scope of discovery has expanded and, with the addition of the new parties and claims, only now has begun in earnest. As a result, the existing Scheduling Order is no longer feasible.

BACKGROUND

2. On November 17, 2006, Plaintiff Jennifer and Slade Piggot filed a Complaint in the Circuit Court of Butler County, Alabama, asserting claims for negligence and wantonness against the Defendant Gray Construction, Inc., (“Gray”). This action was removed to United States District Court for the Middle District of Alabama, Northern Division, on December 29, 2006.

3. On December 29, 2006, Hwashin America Corporation (“Hwashin”) filed a Motion to Intervene.

4. On March 13, 2007, Plaintiffs, Gray and Hwashin submitted their Report of Parties’ Planning Meeting, and on March 20, 2007, the Court entered its Uniform Scheduling Order.

5. On May 16, 2007, the Court granted Hwashin’s Motion to Intervene, and

the Complaint in Intervention was filed by Hwashin on May 22, 2007.

6. On June 8, 2007, Gray filed a Motion for Leave to File a Third Party Complaint against Hwashin, Cooper's Steel Fabricators, Inc., All-South Subcontractors, Inc., Freeland-Harris Consulting Engineers of Kentucky, Inc., Freeland-Harris Consulting Engineers of Georgia, Inc., The Hardy Corporation, Latta Plumbing & Construction Company, Inc. and Firestone Building Products Company, LLC. The Third Party Complaint asserts claims for contractual and common law indemnification, breach of contract, breach of warranty and negligence. The Court granted Gray's Motion for Leave to File Third Party Complaint on June 8, 2007. Thereafter on June 8, 2007, Gray filed its Third Party Complaint.

7. On June 29, 2007, Hwashin filed a Motion for Leave to file its Amended Complaint in Intervention against Gray, GNF Architects and Engineers, PSC, The Hardy Corporation, Freeland-Harris Consulting Engineers of Georgia, Inc., Freeland-Harris Consulting Engineers of Kentucky, Inc., All-South Subcontractors, Inc., Mid-South Subcontractors, Inc., Coopers Steel Fabricators, Inc., Latta Plumbing & Construction Company, Inc., and Firestone Building Products Company, LLC. Plaintiffs also filed a Motion for Leave to File an Amendment to Complaint asserting claims against the same parties. These motions are pending before the Court at this time.

LEGAL STANDARD

8. Federal Rule of Civil Procedure 16(b) provides that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge." "The court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension." *White v. Volvo Trucks of*

North America, Inc., 211 F.R.D. 668, 669 (M.D. Ala.2002) (internal quotations omitted); *see also Nobles v Rural Cmty. Ins. Serv.*, 303 F.Supp2.d 1279, 1283 (M.D. Ala. 2004) (granting a motion to modify a scheduling order upon a showing of good cause).

DISCUSSION

A. Good Cause Exists for Granting this Motion.

9. Seven new third party defendants have recently been added in this case. The Third Party Defendants have carefully considered the existing case deadlines and, in their collective estimation, believe they are not feasible.

10. The Third Party Defendants note that it is the general practice of the courts to “enter deadlines...*after obtaining proposals from counsel for the parties*, and to then enforce those deadlines.” *White*, 211 F.R.D. at 669 (emphasis added). The Scheduling Order was entered on March 20, 2007, before the Third Party Defendants were added to this case. None of the Third Party Defendants participated in the Rule 26(f) planning meeting or had any input into the Rule 26(f) report (Doc. # 6-2) filed with the Court. The Third Party Defendants also had no opportunity to object to any of the deadlines set forth in the Scheduling Order. As a matter of fairness, the Third Party Defendants should have the opportunity to participate in the scheduling of binding case deadlines.

11. Though the Third Party Defendants have been diligent in their investigations of the facts and issues in this case, even the most diligent litigant would have great difficulty meeting the existing case deadlines. For example, the present deadline for dispositive motions is November 2, 2007. Thus, significant discovery relating to summary judgment issues would need to be completed well in advance of that date to afford the parties sufficient time to prepare and file their dispositive motions.

This case involves numerous issues regarding the construction, maintenance and subsequent damage to the Hwashin facility in Butler County, Alabama, subrogation claims by Hwashin, and Plaintiffs' claims for personal injury. The Report of Parties' Planning Meeting, that was filed on March 13, 2007, directs the parties to exchange initial disclosures on March 23, 2007. This date had already passed when the Third Party Defendants were added as parties in this case. Similarly, in the Uniform Scheduling Order, the present deadline for Plaintiffs' expert disclosures is November 2, 2007, and the deadline for Defendant/Third Party Plaintiff Gray's expert disclosures is December 3, 2007. There is no provision for expert disclosures by the Third Party Defendants. If the Third Party Defendants were to assume that the expert reports are also due on December 3, 2007, it would be extremely difficult to conduct basic discovery, retain fact and damage experts and serve expert reports upon the other parties before the expert deadline.

12. Recognizing that the existing case deadlines are not feasible and before any party faces the inability of meeting a scheduling order deadline (which would inevitably occur without the relief requested herein), the Third Party Defendants have promptly brought this issue to the Court's attention. The relief requested herein will spare all parties and the Court from the drudgery of contending with numerous motions to modify various case deadlines

WHEREFORE, THE PREMISES CONSIDERED, the Third Party Defendants respectfully move this Court to enter a new Scheduling Order, or allow the parties the opportunity to submit an amended Rule 26(f) report to the Court prior to the entry of an Amended Scheduling Order.

Respectfully submitted this the 1st day of August, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2007, I electronically filed the foregoing with the Clerk of the Court using the **CM/ECF** system that will send notification of such filing to the following counsel:

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